

SECOND REGULAR SESSION

# HOUSE BILL NO. 1423

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES GRATZ, KREIDER, CHAMPION, GREEN (73), THOMPSON, WHORTON, SKAGGS, BOUCHER, BARRY (Co-sponsors), MERIDETH, HOSMER, TOWNLEY, HEGEMAN, FARNEN, RANSALL, NORDWALD, WALTON, BURTON, SCOTT, FOLEY, CARNAHAN, GRAHAM, LUETKENHAUS, SELBY, CRUMP, CLAYTON, BOWMAN, GRIESHEIMER, LEGAN, KOLLER, O'CONNOR, VILLA, SHOEMYER (9), BARNITZ AND WARD.

Read 1<sup>st</sup> time January 10, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3706L.01I

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### AN ACT

To amend chapter 105, RSMo, by adding thereto twenty-one new sections relating to the Missouri sunset act.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 105, RSMo, is amended by adding thereto twenty-one new sections, to be known as sections 105.1250, 105.1253, 105.1256, 105.1259, 105.1262, 105.1265, 105.1268, 105.1271, 105.1274, 105.1277, 105.1280, 105.1283, 105.1286, 105.1289, 105.1292, 105.1295, 105.1298, 105.1301, 105.1304, 105.1307 and 105.1310, to read as follows:

**105.1250. 1. Sections 105.1250 to 105.1310 shall be known and may be cited as the "Missouri Sunset Act".**

**2. As used in sections 105.1250 to 105.1310, the following terms mean:**

**(1) "Advisory committee", a committee, council, commission, or other entity created under state law whose primary function is to advise a state agency;**

**(2) "Commission", the sunset advisory commission;**

**(3) "State agency", an agency expressly made subject to sections 105.1250 to 105.1310.**

**105.1253. 1. There is hereby established the "Sunset Advisory Commission" which shall consist of four members of the senate and one public member appointed by the president pro tem of the senate and four members of the house of representatives and one public member appointed by the speaker of the house of representatives. Each appointing authority may designate himself or herself as one of the legislative appointees.**

**2. A person shall not be eligible for appointment as a public member if such person**

7 or such person's spouse is:

8 (1) Regulated by a state agency that the commission will review during the term for  
9 which the person would serve; or

10 (2) Employed by, participates in the management of, or directly or indirectly has  
11 more than a ten percent interest in a business entity or other organization regulated by a  
12 state agency the commission will review during the term for which the person would serve.

13 3. It shall be grounds for removal of a public member of the commission if the  
14 member does not have the qualifications required in subsection 2 of this section for  
15 appointment to the commission at the time of appointment or does not maintain the  
16 qualifications while serving on the commission. The validity of the commission's action  
17 shall not be affected by the fact that it was taken when a ground for removal of a public  
18 member from the commission existed.

19 4. Senate members shall serve four-year terms, with terms staggered so that the  
20 terms of one-half of the legislative members appointed by the president pro tem of the  
21 senate expire September first of each odd-numbered year. House members shall serve two-  
22 year terms, with the terms expiring September first of each odd-numbered year. Senate  
23 and house members may be reappointed. If the president pro tem of the senate or the  
24 speaker of the house of representatives serves on the commission, he or she shall continue  
25 to serve until resignation from the commission or until he or she no longer holds the office.  
26 Public members shall serve two-year terms expiring September first of each odd-numbered  
27 year.

28 5. Members other than the president pro tem of the senate and speaker of the house  
29 of representatives shall be subject to the following restrictions:

30 (1) After a member serves six years on the commission, the member shall not be  
31 eligible for appointment to another term or portion of a term;

32 (2) A legislative member who serves more than one-half of a full term shall not be  
33 appointed to an immediately succeeding term; and

34 (3) A public member shall not serve more than two consecutive terms and, for  
35 purposes of such prohibition, a member is considered to have served a term only if the  
36 member has served for more than one-half of the term.

37 6. If a vacancy occurs, the appropriate appointing authority shall appoint a person  
38 to serve for the remainder of the unexpired term in the same manner as the original  
39 appointment.

40 7. The commission shall have a chairperson and vice chairperson as presiding  
41 officers. The chairmanship and vice chairmanship shall alternate every two years between  
42 the house and senate membership. Both the chairperson and vice chairperson shall not be

43 from the same house or senate membership group. The president pro tem of the senate  
44 shall designate a presiding officer from the senate membership and the speaker of the  
45 house of representatives shall designate the other presiding officer from the house  
46 membership.

47 8. Six members shall constitute a quorum. A final action or recommendation shall  
48 not be made unless approved by a record vote of a majority of the commission's full  
49 membership.

50 9. Members of the commission shall not receive compensation for their membership  
51 on the commission, but shall be reimbursed for their actual and necessary expenses  
52 incurred in the performance of their duties as members of the commission.

105.1256. 1. The commission shall, subject to appropriations, employ an executive  
2 director to act as the executive head of the commission. The executive director shall,  
3 subject to appropriations, employ persons necessary to implement the provisions of  
4 sections 105.1250 to 105.1310.

5 2. The chairperson and vice chairperson of the commission may employ a staff to  
6 work for them on matters related to commission activities.

7 3. The commission may promulgate rules to implement the provisions of sections  
8 105.1250 to 105.1310. No rule or portion of a rule promulgated under the authority of  
9 sections 105.1250 to 105.1310 shall become effective unless it has been promulgated  
10 pursuant to chapter 536, RSMo.

105.1259. Before October thirtieth of any odd-numbered year prior to the year in  
2 which a state agency subject to sections 105.1250 to 105.1310 is abolished, the agency shall  
3 report to the commission:

4 (1) Information regarding the application to the agency of the criteria in section  
5 105.1271; and

6 (2) Any other information that the agency considers appropriate or that is  
7 requested by the commission.

105.1262. 1. Before September first of any even-numbered year prior to the year  
2 in which a state agency subject to sections 105.1250 to 105.1310 and its advisory committees  
3 are abolished, the commission shall:

4 (1) Review and take action necessary to verify the reports submitted by the agency  
5 pursuant to section 105.1259;

6 (2) Consult with the legislative budget committees, the governor's budget and  
7 planning office, the state auditor, and the state treasurer, or their successors on the  
8 application to the agency of the criteria provided in section 105.1271;

9 (3) Conduct a performance evaluation of the agency based on the criteria provided

10 in section 105.1271 and prepare a written report; and

11 (4) Review the implementation of the commission recommendations contained in  
12 the reports presented to the general assembly during the preceding legislative session.

13 2. The written report prepared by the commission pursuant to subdivision (3) of  
14 subsection 1 of this section is a public record.

105.1265. 1. Between September first and December first of the calendar year prior  
2 to the year in which a state agency subject to sections 105.1250 to 105.1310 and its advisory  
3 committees are abolished, the commission shall conduct public hearings concerning but not  
4 limited to the application to the agency of the criteria provided in section 105.1271.

5 2. The commission may hold the public hearings prior to September first if the  
6 evaluation of the agency required in subdivision (3) of subsection 1 of section 105.1271 is  
7 complete and available to the public.

105.1268. 1. At each regular legislative session, the commission shall present to the  
2 general assembly and the governor a report on the agencies and advisory committees  
3 scheduled to be abolished.

4 2. In the report, the commission shall include:

5 (1) Its specific findings regarding each of the criteria prescribed by section  
6 105.1271;

7 (2) Its recommendations based on the matters prescribed by section 105.1274; and

8 (3) Any other information the commission deems necessary for a complete  
9 evaluation of the agency.

105.1271. The commission and its staff shall consider the following criteria in  
2 determining whether a public need exists for the continuation of a state agency or its  
3 advisory committees, or for the performance of the functions of the agency or its advisory  
4 committees:

5 (1) The efficiency with which the agency or advisory committee operates;

6 (2) An identification of the objectives intended for the agency or advisory  
7 committee and the problem or need that the agency or advisory committee was intended  
8 to address, the extent to which the objectives have been achieved, and any activities of the  
9 agency in addition to those granted by statute and the authority for such activities;

10 (3) An assessment of less restrictive or alternative methods of performing any rule  
11 or regulation that the agency performs that could adequately protect the public;

12 (4) The extent to which the advisory committee is needed and is used;

13 (5) The extent to which the jurisdiction of the agency and the programs  
14 administered by the agency overlap or duplicate those of other agencies and the extent to  
15 which the programs administered by the agency can be consolidated with the programs of

16 other state agencies;

17 (6) Whether the agency has recommended to the general assembly statutory  
18 changes calculated to be of benefit to the public rather than to an occupation, business, or  
19 institution that the agency regulates;

20 (7) The promptness and effectiveness with which the agency disposes of complaints  
21 concerning persons affected by the agency;

22 (8) The extent to which the agency has encouraged participation by the public in  
23 making rules and decisions as opposed to participation solely by those it regulates and the  
24 extent to which the public participation has resulted in rules compatible with the objectives  
25 of the agency;

26 (9) The extent to which the agency has complied with applicable requirements of:

27 (a) An agency of the United States or this state regarding equality of employment  
28 opportunity and the rights and privacy of individuals; and

29 (b) State law and applicable rules of any state agency regarding purchasing goals  
30 and programs for historically underutilized businesses;

31 (10) The extent to which changes are necessary in the enabling statutes of the  
32 agency so that the agency can adequately comply with the criteria established in this  
33 section;

34 (11) The extent to which the agency issues and enforces rules relating to potential  
35 conflicts of interest of its employees;

36 (12) The extent to which the agency complies with chapter 610, RSMo, and follows  
37 records management practices that enable the agency to respond efficiently to requests for  
38 public information; and

39 (13) The effect of federal intervention or loss of federal funds if the agency is  
40 abolished.

105.1274. 1. In its report on a state agency, the commission shall:

2 (1) Make recommendations on the abolition, continuation, or reorganization of  
3 each affected state agency and its advisory committees and on the need for the performance  
4 of the functions of the agency and its advisory committees;

5 (2) Make recommendations on the consolidation, transfer, or reorganization of  
6 programs within state agencies not under review when the programs duplicate functions  
7 performed in agencies under review;

8 (3) Recommend appropriation levels for each state agency and advisory committee  
9 for which abolition or reorganization is recommended pursuant to subdivision (1) or (2)  
10 of this subsection; and

11 (4) Include drafts of legislation necessary to carry out the commission's

12 recommendations pursuant to subdivisions (1) and (2) of this subsection.

13       **2. On the date the commission presents its report to the general assembly pursuant**  
14 **to section 105.1268, the commission shall present to the state auditor the commission's**  
15 **recommendations that do not require a statutory change to be put into effect. The state**  
16 **auditor shall examine the recommendations and, as part of the next scheduled audit of the**  
17 **agency, shall prepare a report on the manner in which the agency has implemented the**  
18 **recommendations.**

**105.1277. 1. In the two-year period preceding the date scheduled for the abolition**  
2 **of a state agency pursuant to sections 105.1250 to 105.1310, the commission may exempt**  
3 **certain agencies from the requirements of sections 105.1250 to 105.1310 relating to staff**  
4 **reports, hearings, and evaluations.**

5       **2. The commission shall only exempt agencies that have been inactive for a period**  
6 **of two years preceding the date the agency is scheduled for abolition.**

7       **3. The commission's action in exempting agencies pursuant to this section shall be**  
8 **done by an affirmative record vote of all members of the commission.**

**105.1280. During each legislative session, the staff of the commission shall monitor**  
2 **legislation affecting agencies that have undergone sunset review and shall periodically**  
3 **report to the members of the commission on proposed changes which would modify prior**  
4 **recommendations of the commission.**

**105.1283. An advisory committee, the primary function of which is to advise a**  
2 **particular state agency, is abolished on the date set for abolition of the agency unless the**  
3 **advisory committee is expressly continued by law.**

**105.1286. 1. During the regular legislative session immediately prior to the**  
2 **abolition of a state agency or an advisory committee that is subject to sections 105.1250 to**  
3 **105.1310, the general assembly by law may continue the agency or advisory committee for**  
4 **a period not to exceed twelve years.**

5       **2. Sections 105.1250 to 105.1310 do not prohibit the general assembly from:**

6       **(1) Terminating a state agency or advisory committee subject to sections 105.1250**  
7 **to 105.1310 at a date earlier than that provided in sections 105.1250 to 105.1310; or**

8       **(2) Considering any other legislation relative to a state agency or advisory**  
9 **committee subject to sections 105.1250 to 105.1310.**

**105.1289. 1. Except as provided in subsection 2 of this section, the general assembly**  
2 **shall not consider in one bill the continuation, transfer, or modification of more than one**  
3 **state agency and the agency's functions and advisory committees.**

4       **2. If more than one agency, advisory committee, or function is to be consolidated,**  
5 **the general assembly may consider in one bill only the agencies or advisory committee to**

6 be consolidated.

7       **3. Any legislation to continue a state agency, to transfer its functions, or to**  
8 **consolidate it with another agency shall include the affected agencies in the title of the**  
9 **legislation.**

10       **105.1292. 1. A state agency that is abolished in an odd-numbered year may**  
11 **continue in existence until September first of the following year to conclude its business.**  
12 **Unless the law provides otherwise, abolishment does not reduce or otherwise limit the**  
13 **powers and authority of the state agency during the concluding year. A state agency is**  
14 **terminated and shall cease all activities at the expiration of the one-year period. Unless the**  
15 **law provides otherwise, all rules adopted by the state agency expire at the expiration of the**  
16 **one-year period.**

17       **2. Any unobligated and unexpended appropriations of an abolished agency or**  
18 **advisory committee lapse on September first of the even-numbered year after abolishment.**

19       **3. Except as provided by subsection 6 of this section or as otherwise provided by**  
20 **law, all moneys in a dedicated fund of an abolished state agency or advisory committee on**  
21 **September first of the even-numbered year after abolishment shall be transferred to the**  
22 **credit of the general revenue fund. Any law or portion of a law dedicating the moneys to**  
23 **a specific fund of an abolished agency shall become void on September first of the even-**  
24 **numbered year after abolishment.**

25       **4. Unless the law or general appropriations act provides otherwise, an abolished**  
26 **state agency or advisory committee funded in an appropriations act for both years of the**  
27 **biennium shall not spend or obligate any of the moneys appropriated to it for the second**  
28 **year of the biennium.**

29       **5. Unless the governor designates an appropriate state agency as prescribed in**  
30 **subsection 6 of this section, property and records in the custody of an abolished state**  
31 **agency or advisory committee on September first of the even-numbered year after**  
32 **abolishment shall be transferred to the office of administration. If the governor designates**  
an appropriate state agency, the property and records shall be transferred to the designated state agency.

**6. In recognition of the state's continuing obligation to pay bonded indebtedness**  
and all other obligations, including lease, contract, and other written obligations, incurred  
by a state agency abolished pursuant to sections 105.1250 to 105.1310, sections 105.1250  
to 105.1310 do not impair or impede payment of bonded indebtedness and all other  
obligations, including lease, contract, and other written obligations, in accordance with  
their terms. If an abolished state agency has outstanding bonded indebtedness or other  
outstanding obligations, including lease, contract, or other written obligations, the bonds

33 and all other such obligations remain valid and enforceable in accordance with their terms  
34 and subject to all applicable terms and conditions of the laws and proceedings authorizing  
35 the bonds and all other such obligations. The governor shall designate an appropriate state  
36 agency to continue to carry out all covenants contained in the bonds and all other such  
37 obligations, and the proceedings authorizing them, including the issuance of bonds, and  
38 the performance of all other such obligations to complete the construction of projects or  
39 the performance of other such obligations. The designated state agency shall provide  
40 payment from the sources of payment of the bonds in accordance with the terms of the  
41 bonds and shall provide payment from the sources of payment from all other such  
42 obligations in accordance with their terms, whether from taxes, revenues, or otherwise,  
43 until the bonds and interest on the bonds are paid in full and are performed and paid in  
44 full. If the proceedings so provide, all funds established by law or proceedings authorizing  
45 the bonds or authorizing other such obligations shall remain with the state treasurer or  
46 previously designated trustees. If the proceedings do not provide that the funds remain  
47 with the state treasurer or previously designated trustees, the funds shall be transferred  
48 to the designated state agency.

105.1295. 1. The commission may issue process to compel the attendance of  
2 witnesses and the production of any documents necessary or proper for the purposes of the  
3 commission proceedings. Such process may be served on a witness at any place in this  
4 state.

5 2. If a majority of the commission directs the issuance of a subpoena, the  
6 chairperson shall issue the subpoena in the name of the commission.

7 3. If the chairperson is absent, the chairperson's designee may issue a subpoena or  
8 other process in the same manner as the chairperson.

9 4. If necessary to obtain compliance with a subpoena or other process, the  
10 commission may issue attachments. The attachments may be addressed to and served by  
11 any peace officer in this state.

12 5. Testimony taken under subpoena shall be reduced to writing and given under  
13 oath subject to the penalties of perjury.

105.1298. 1. The commission may request the assistance of state agencies and  
2 officers. When assistance is requested, a state agency or officer shall assist the commission.

3 2. In carrying out its functions pursuant to sections 105.1250 to 105.1310, the  
4 commission or its designated staff member may inspect the records, documents, and files  
5 of any state agency.

105.1301. If an employee is displaced because a state agency or its advisory  
2 committee is abolished, reorganized, or continued, the state agency and the division of



3 employment security in the department of labor and industrial relations shall make a  
4 reasonable effort to relocate the displaced employee.

105.1304. Except as otherwise expressly provided, abolition of a state agency does  
2 not affect the rights and duties that matured, penalties incurred or imposed, civil or  
3 criminal liabilities that arose, or proceedings initiated before the effective date of the  
4 abolition.

105.1307. 1. Each bill filed in the house of representatives that would create a new  
2 state agency having regulatory authority or a new advisory committee to a state agency  
3 having regulatory authority shall be forwarded to the commission.

4 2. The commission shall review the legislation to determine if:

5 (1) The proposed regulatory and other functions of the agency or committee could  
6 be administered by one or more existing state agencies or advisory committees;

7 (2) The form of regulation, if any, proposed by the legislation is the least restrictive  
8 form of regulation that will adequately protect the public;

9 (3) The legislation provides for adequate public input regarding any regulatory  
10 function proposed by the legislation; and

11 (4) The legislation provides for adequate protection against conflicts of interest  
12 within the agency or committee.

13 3. After reviewing the legislation, the commission shall forward a written comment  
14 on the legislation to the sponsor of the legislation and the chairperson of the committee to  
15 which the legislation is referred.

105.1310. 1. The commission may accept gifts, grants, and donations from any  
2 organization described in Section 501(c)(3) of the Internal Revenue Code for the purpose  
3 of funding any activity pursuant to sections 105.1250 to 105.1310.

4 2. All gifts, grants, and donations shall be accepted in an open meeting by a  
5 majority of the voting members of the commission and reported in the public record of the  
6 commission with the name of the donor and purpose of the gift, grant, or donation.